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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BARBARA JENNINGS

Appeal 2008-1888
Application 10/693,129
Technology Center 3700

Decided: July 29, 2008

Before ERIC GRIMES, LORA M. GREEN, and
RICHARD M. LEOVITZ, *Administrative Patent Judges*.

LEOVITZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 2, 3, 5-7, 13, 14, 18, and 21. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

The claims are drawn to a garment having “handholds” for use by a caregiver to facilitate moving or positioning a patient wearing the garment (Spec. 2: 15-22). The claimed garment has right and left tail portions which extend from the garment body and pass through the groin area of the patient, allowing the garment to be anchored and attached to the patient’s body.

Claims 2, 3, 5-7, 13, 14, 18, and 21 are appealed (App. Br. 2). The claims stand finally rejected as follows:

1) Claims 2, 3, 5, 6, 13, 14, 18, and 21 under 35 U.S.C. § 102(b) as anticipated by Jennings (U.S. Pat. No. 6,230,329 B1, issued May 15, 2001) (Ans. 2); and

2) Claim 7 under 35 U.S.C. § 103(a) as obvious over Jennings (Ans. 2).

Claims 21 and 7, which are representative of the rejections, read as follows:

21. A garment used by a caregiver to manipulate a patient, said garment comprising a garment body including a front garment portion and a back garment portion traversing front and back areas, respectively, of said patient between at least a garment waist line area to a right tail portion and a left tail portion forming a garment body interconnection between said front garment portion and said back garment portion passing through groin area of said patient to anchor said garment body in a direction perpendicular to said waist line area;

attachment devices carried by a distal end of said right tail portion and a distal end of said left tail portion to form interconnections with said garment body; and a plurality of handholds on said garment body for use by a caregiver to manipulate said patient.

7. The garment according to claim 21 further including a left loop and a right loop disposed on said front garment portion for passage of each of distal end of said right tail portion and said distal end of said left tail portion, back on itself.

ANTICIPATION BY JENNINGS

Claims 2, 3, 5, 6, 13, 14, 18, and 21 stand rejected under 35 U.S.C. § 102(b) as anticipated by Jennings.

Issue

The Examiner's position is that the elongated tail flap on Jennings' garment has "a right tail portion" and "a left tail portion" as required by claim 21. Appellant argues that the Examiner improperly interpreted the sing tail flap described by Jennings to have right and left portions. Thus, the issue is whether the Examiner erred in finding that the tail flap on Jennings' garment has "a right tail portion" and "a left tail portion" as in claim 21.

Claim Interpretation

"A determination that a claim is anticipated under 35 U.S.C. § 102(b) involves two analytical steps. First, the Board must interpret the claim language . . . Secondly, the Board must compare the construed claim to a prior art reference and make factual findings that 'each and every limitation is found either expressly or inherently in [that] single prior art reference.' *Celeritas Techs. Ltd. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998)." *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004).

Claim interpretation is essential because it is the claim language which determines a claim's proper scope. During patent examination, claim terms are given their broadest reasonable meaning in their ordinary usage as they would be understood by one of ordinary skill in the art "taking into

account whatever enlightenment by way of definitions or otherwise that may be afforded by written description in applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Using this principle as a guide, we turn to the claim interpretation issue before us.

In this case, the dispute between the Examiner and the Appellant turns on the interpretation of "a right tail portion and a left tail portion" of the garment recited in independent claim 21. The Specification does not define "right tail portion" nor "left tail portion." However, two different "tail" embodiments are described in it. Figures 1, 2, 7A, and 8B show "double tail" embodiments; Figures 11A and 12B show "single tail" embodiments (Spec 4:19 to 6:12).

Figure 2 shows a "double tail" garment having "extended portions" 16 and 18 that "take the form of a right tail portion and a left tail portion" which pass through the groin area of the patient (Spec. 7:20 to 8:9). As illustrated in the figure, the tail portions form two discrete tails which are characterized in the Specification as a "double tail" or a "bifurcate portion" (Spec. 4: 19-22; 3:2). Figure 12B shows a different embodiment, also having an extended garment portion, but forming a single unbifurcated tail (Spec. 11:18-20).

Although the Specification explicitly characterizes its one and two tail embodiments as "single" and "double" tail garments (*see supra*), the claims do not use this language. Rather, claim 21 refers to a garment having "a right tail portion" and "a left tail portion." The term "portion" is not defined in the Specification. However, the tails of both the double tail and single tail embodiments are described as "portions" of the garment (Spec. 14:8-9) apparently because they are part of and extend outwardly from the garment

body. Consistent with this description, we adopt the ordinary and customary meaning of the term “portion” to mean “a part of any whole,”¹ where “portion” indicates a part of the garment. Thus, “tail portion” as recited in claim 21 would reasonably be understood by persons of ordinary skill in the art to read on: (1) the double tail embodiment, where each “portion” is a discrete part or tail of a two tailed garment and (2) the single tail embodiment where “portion” refers to the left-side and right-side parts of the single tail. With regard to (2), Figure 12B shows a single tail with left and right portions demarcated by a line through the middle.

In sum, giving the claims their broadest reasonable interpretation, we interpret “a right tail portion and a left tail portion,” as the Examiner did (Ans. 6), to cover garments having a single or double tail extending from the garment body.

Findings of Fact

Having interpreted claim 21, we next turn to the prior art to determine whether each and every limitation of the claimed garment can be found in it. Because the only dispute in this case involves the claimed right and left tail portions, we focus our analysis of this aspect of the claimed garment.

The Jennings patent

1. Jennings describes a garment (10) used by a caregiver to move patients (Jennings, Abstract; at col. 2, ll. 62-64; *see* Fig. 1; Ans. 3).
2. The garment has an “elongated tail flap 21” having a free end 24 which extends from the garment body between the leg cutouts (Jennings, at col. 3, ll. 30-35; *see* Fig. 1; Ans. 3).

¹ *The Random House College Dictionary* 1034 (Rev. Ed. 1982).

3. As shown in Figure 1, the flap 21 has closure pairs 22 on the right and left sides of the free end 24 to mate with elements 26 on the body of the garment to close it (Jennings, at col. 3, ll. 32-40; *see* Fig. 1; Ans. 3).

Comparison between the claimed invention and Jennings

4. We have interpreted “a right tail portion and a left tail portion,” as recited in claim 21, to read on the left-side and right-side parts of a single tail extending from a garment body. *See supra* section titled “Claim Interpretation”.

5. As shown in Figure 1, Jennings describes a garment that has an elongated single tail flap having a right and left sides, each holding closure pairs 22 (FF1-3).

6. The right and left sides of the single tail flap are “portions” of the elongated tail of Jennings’s garment because they are a part of the whole garment and therefore meet the limitations of claim 21 of “a right tail portion and a left tail portion.”

7. As this element is the only element in dispute, we conclude that Jennings teaches all the limitations of claim 21.

Discussion

“A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.” *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). In this case, we agree with the Examiner’s determination (*see* Ans. 3), as summarized above, that Jennings anticipates claim 21.

Appellant contends that “the rejection of claim 21 rewrites the Jennings specification by wrongly identifying ‘a right tail portion 24’ and ‘a left tail portion 24’” (App. Br. 9). Quoting from Jennings’ description of a

“flap 21,” Appellant argues that “it is . . . improper to interpret[] the Jennings reference as teaching one skilled in the art to provision of two tail portions and to construct and arrange the tail portions as recited in” claim 21 (*id.* at 10).

This argument does not persuade us that the Examiner erred. The key issue in this rejection is whether claim 21 is properly interpreted to read on a single tail embodiment having right and left parts located on the same tail. Appellant appears to believe that this interpretation is improper and that claim 21 is limited to a garment having two distinct garment body extensions, i.e., a bifurcated flap, not a single flap as in the Jennings patent. However, she does not point to any support for this interpretation of claim 21. To the contrary, the Specification describes both one tail and double tail embodiments and the term “portion” as used in claim 21 does not distinguish them. *See supra* section titled “Claim Interpretation”.

During patent examination, claims are “given their broadest interpretation consistent with the specification, in order to facilitate sharpening and clarifying the claims at the application stage.” *In re Buszard*, 504 F.3d 1364, 1366 (Fed. Cir. 2007). In this case, we find that the language of claim 21 is reasonably interpreted to cover the single flap structure described in the Jennings patent.

We do not agree that the Examiner’s “interpretation of the Jennings reference” was “improper” (App. Br. 9). To the contrary, the Examiner has read Jennings straightforwardly, but interpreted claim 21 to read on Jennings’ single tail garment.

For the foregoing reasons, we affirm the rejection of claim 21 as anticipated by Jennings. Claims 2, 3, 5, 6, 13, 14, and 18 fall with claim 21

because separate arguments for their patentability were not provided. 37
C.F.R. § 41.37(c)(1)(vii).

OBVIOUSNESS OVER JENNINGS

Claim 7 stands rejected under 35 U.S.C. § 103(a) as obvious over Jennings. The Examiner states that Jennings does not describe the particular loop closures as recited in claim 7. However, the Examiner finds the claimed loops would have been equivalent to Jennings' fastening devices and concludes it would have been obvious to have so modified Jennings (Ans. 5-6).

Appellant argues that the "rejection should be reversed in view of the improper interpretation of the Jennings reference contending that there is disclosure of left and right tail portions" (App. Br. 12).

This argument is not persuasive. As discussed above, we do not agree that the Examiner's "interpretation of the Jennings reference" was "improper." The Examiner read Jennings properly, but interpreted claim 21 to read on Jennings' single tail garment. As Appellant points to no other deficiency in the rejection, and as we find none, we affirm the rejection of claim 7 as obvious over Jennings.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

AFFIRMED

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